

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Ronald G. Cervetti,**  
Petitioner-Appellant,

v.

**Black Hawk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-07-1563**  
**Parcel No. 8913-20-401-004**

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On September 28, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Ronald G. Cervetti, was represented by Fred B. Mieke, Jr., of Commercial Real Estate Services, Iowa Realty, Waterloo, Iowa. Assistant County Attorney David Mason represented the Board of Review by telephone. Both parties testified in support of their position but relied on the evidence in the record. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Ronald G. Cervetti, owner of property located at 4037 University Avenue, Waterloo, Iowa, appeals from the Black Hawk County Board of Review decision regarding his 2011 assessment. The commercial property's 2011 assessment was \$234,470; allocated as \$107,260 in land value and \$127,210 in improvements.

Cervetti protested to the Board of Review claiming the subject property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2). The Board of Review denied the protest. Cervetti then appealed to this Board reasserting his claim. He values the property at \$133,800, representing \$50,000 in land value and \$83,800 in building value.

The subject property consists of two buildings: a two-story, metal warehouse with pole-frame building, with 1080 square feet that was built in 2008, and a one-story, frame building with 704 square feet that was built in 2007. According to the property record card, both buildings are considered to be in normal condition. The larger building is of average construction (4 grade), and the smaller building is of below average construction (5-10 grade). The site consists of 0.492 acres.

Fred B. Mieke, Jr. (Mieke) testified on behalf of Cervetti. Mieke testified regarding his background in real estate sales and his experience in commercial real estate transactions, including sales and leases.

Mieke arrived at his conclusion of value based on five comparable properties that he submitted with Cervetti's appeal to this Board. None of the comparable properties were recent sales. Mieke only provided the properties' assessments and assessed value per square foot. These properties are of little relevance for establishing an over assessment claim because they have not recently sold, and sales are the preferred method for establishing market value.

The subject property recently sold; however, the sale included additional land value. Cervetti purchased it, and the additional land, in February 2011 for \$238,000. The purchase was also from Cervetti's landlord. Mieke stated Cervetti wanted to own the property instead of renting.

Mieke also valued the property using the income approach. In the first set of calculation, which he presented to the Board of Review, Mieke determined a net operating income (NOI) of \$14,648 and applied a capitalization rate of 11% for a final value of \$133,164. Mieke revised his calculations for the appeal to this Board. He used a NOI of \$15,000 and a capitalization rate of 10% to determine a final value of \$150,000 for the subject property.

Tami McFarland, Black County Assessor, testified on behalf of the Board of Review. McFarland testified she believed the Cervetti purchase price of \$238,000 was an arms-length transaction and that the Department of Revenue considered the transaction as a normal sale for

equalization purposes. We note, however, the Department's list of abnormal sales for equalization indicates the sale is not normal for equalization purposes. Moreover, under Iowa Code section 441.21(2) sale of adjoining land or other land to be operated as a unit is an abnormal sale that would require adjustment. McFarland also pointed out that Mieke's comparables were not adjusted for differences between them and the subject property when they were presented to the Board of Review.

After reviewing all the evidence, we find Cervetti did not prove the subject property was over-assessed. Although Mieke performed a brief income approach for the subject property, he did not provide sales data to support his value opinion of the subject property.

### *Conclusions of Law*

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If



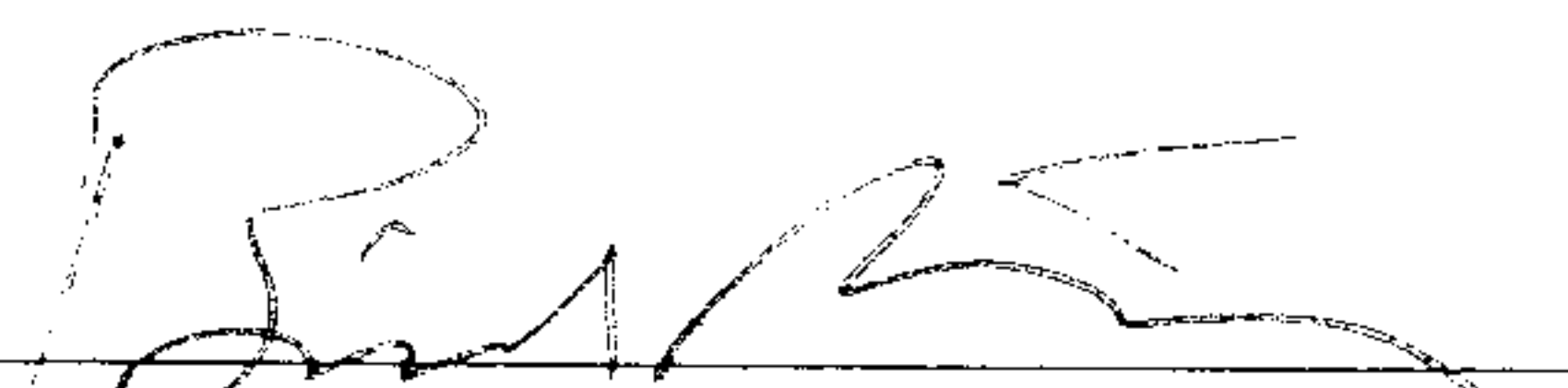
sales are not available, “other factors” may be considered in arriving at market value. § 441.21(2).

The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Viewing the evidence as a whole, we determine Cervetti has failed to prove his property is over-assessed. Although Miehle provided comparable properties, none of them were recent sales. Furthermore, even though the subject property sold shortly after the assessment date, the sale of the property does not conclusively establish its value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). And in this case, the sale of the subject property had factors that distort its market value since it occurred between the landlord and tenant and was of adjoining parcels to be operated as a unit. § 441.21(2).

THE APPEAL BOARD ORDERS that assessment of the Ronald G. Cervetti’s property located at 4037 University Avenue, Waterloo, Iowa, as determined by the Black Hawk County Board of Review is affirmed.

Dated this 24 day of October 2012.

  
Richard Stradley, Presiding Officer


  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-24</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u></u>